

## Opinion No. 66-06

January 13, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, Assistant Attorney General

**TO:** Mr. Murray E. Morgan, Chairman, New Mexico State Corporation Commission, Capitol Building, Santa Fe, New Mexico

### QUESTION

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Do filed tariffs control the charges to be made by common carriers hauling goods for the United States Government or any of its agencies in intrastate commerce?

#### CONCLUSION

See analysis.

### OPINION

#### {\*7} ANALYSIS

For the purpose of answering your question, it is assumed that you are referring to the situation wherein the United States Government or one of its agencies has attempted to obtain a reduction in the tariff rate for carriage performed for the Federal government by an intrastate carrier. We are, therefore, not concerned with those instances wherein no attempt has been made by the Federal government or the carrier in question to obtain a rate different from that on file with the New Mexico State Corporation Commission.

The Supreme Court of the United States of America has decided this precise question on at least two prior occasions. The first decision came in the case of **Public Utilities Commission of California v. United States**, 355 U.S. 534, 2 L. Ed. 2d 470, 78 S. Ct. 446, rehearing denied 356 U.S. 925, 2 L. Ed. 2d 760, 78 S. Ct. 713. In that case, the Supreme Court held that where the Federal government, or one of its agencies, has an established plan of negotiating for rates and charges for the transportation to be performed for the Government and {\*8} the agency actually practices that procedure, then the State cannot interfere with the negotiations between the Federal government and the carrier to require a rate different from that agreed upon in the negotiations. That particular case involved carriage for the military services of government property. This same principle, however, was carried further in the case of **United States v. Georgia Public Service Commission**, 371 U.S. 285, 9 L.Ed2d 317, 83 S. Ct. 397. In this last case the United States Supreme Court held that the legislative intent of the Congress of the United States of America showed that the General Services Administration should

be able to negotiate for rates different from filed tariffs for the movement in intrastate commerce of household goods belonging to Federal civilian employees. The supremacy clause of the United States Constitution was therefore called into play to provide that this Federal legislation enabling negotiation by bids and otherwise would control over filed tariffs of the Georgia Public Service Commission and that there was no burden upon the Administrator to attempt to get the state-fixed rates changed before different rates could be charged for hauling these household goods for Federal employees.

Based upon these two decisions, therefore, it seems apparent that the answer to your question is that a rate fixed by a carrier and the Federal government in their negotiations is supreme to any tariff filed with the State of New Mexico.